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MOYERS DOCUMENTARY EXPOSES NAFTA PROVISION ALLOWING MULTINATIONAL CORPORATIONS TO CHALLENGE STATE ENVIRONMENTAL AND HEALTH LAWS

Program Includes California State Senator Sheila Kuehl's Efforts to Examine the Impact of Trade Agreements on State Lawmaking Authority

SACRAMENTO - On Tuesday, February 5, at 11pm, PBS will air a documentary by Bill Moyers exposing the controversial NAFTA provision known as Chapter 11. Called "Trading Democracy", the program details how this little known provision of NAFTA could cost taxpayers billions of dollars and subject a number of important environmental and health regulations to challenges by foreign corporations.

Through interviews with public policy experts, civic leaders and legislators, including Senator Kuehl, the documentary explores the unintended consequences of the controversial investment provision. "Chapter 11 undermines the basic principles of our federalist system", states Senator Kuehl. "I am concerned that this provision in NAFTA, and its proposed inclusion in other trade agreements, will threaten the ability of governments at all levels to establish protections for their citizens."

Bill Moyers states, "When the North American Free Trade Agreement became law of the land almost a decade ago, the debate we heard was about jobs. One provision was too obscure to stir up controversy. It was called Chapter 11, and it was supposedly written to protect investors from having their property seized by foreign governments. But since NAFTA was ratified, corporations have used Chapter 11 to challenge the powers of government to protect its citizens, to undermine environmental and health laws, even to attack our system of justice."

Chapter 11 granted expansive new rights and privileges to foreign investors operating in the three NAFTA nations, the US, Mexico, and Canada. Since the implementation of Chapter 11, foreign corporations have been given legal standing to sue sovereign nations as a result of laws they claim inhibit their ability to do business. "These investor provisions are unprecedented in a multilateral trade agreement, and since the enactment of NAFTA, corporations from all three NAFTA countries have used their new rights to challenge a host of public welfare and environmental regulations, domestic judicial decisions, and procurement laws," states Senator Kuehl. "We can't allow laws enacted through a democratic process to be circumvented in a secret process by private entities accountable to no one."

The documentary has significant relevance to California, given that California's phase-out of the gasoline additive MTBE was one of the first laws challenged under Chapter 11. In that case, the Canadian based Methanex Corporation sued the United States government because the alleged loss of their California business amounted to a \$1 billion loss of profit -- the same amount they are claiming is owed to them by the American taxpayers. The case is currently being heard in closed door tribunals that allow California no opportunity to defend its law. This challenge is covered in a report entitled "Paying to Regulate: A Guide to Methanex vs. the U.S. and NAFTA" issued by the Harrison Institute of Public Policy at Georgetown Law School. A copy of the guide is available through the Senate Select Committee on International Trade Policy and State Legislation.

Senator Kuehl and other lawmakers are working to ensure that NAFTA's Chapter 11 is not used as the model for the Free Trade Area of the Americas (FTAA) a pending free trade agreement between 34 countries of the Western Hemisphere. Moreover, any revision of the provision should establish preconditions against providing foreign investors with additional protections beyond those enjoyed by domestic investors. Without such conditions, attempts at revision are likely to fail to safeguard the institutions of federalism, and the rights of state and local officials to regulate corporations in the interests of public health and the environment. Later this month, Senator Kuehl will be introducing a resolution on investment rules outlining these and other policy requests to Congress. In addition, Senator Kuehl supports efforts in the US Congress to amend current Fast Track legislation to ensure negotiating objectives that do not provide foreign corporations the investment rights now contained in Chapter 11. That federal legislation is most likely to be heard on Capitol Hill in March.